

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Max Media of Montana, LLC |) | File No. EB-02-ST-234 |
| 900 Laskin Road |) | NAL/Acct. No. 200232900002 |
| Virginia Beach, VA 23451 |) | FRN 0004-9891-33 |
| |) | |
| Antenna Structure Registration # 1051225 |) | |
| Great Falls, MT |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 27, 2002

By the District Director, Seattle Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Max Media of Montana, LLC ("Max Media"), registered owner of antenna structure number 1051225 in Great Falls, Montana, has apparently willfully violated Section 303(q) of the Communications Act of 1934, as amended ("Act"),¹ and Sections 17.21, 17.47(a)(2) and 17.57 of the Commission's Rules ("Rules")² by failing to exhibit the prescribed antenna structure lighting, failing to properly maintain an operating automatic alarm system to indicate when the structure lighting is not operating, and failing to notify the Federal Communications Commission ("FCC") of the change of ownership of the antenna structure. We conclude, pursuant to Section 503(b) of the Act,³ that Max Media is apparently liable for forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On Friday, May 3, 2002, at approximately 5:30 p.m., a Seattle Office Agent conducting a random antenna structure inspection in Great Falls, Montana, observed that the top high-intensity light on the Antenna Structure Registration ("ASR") # 1051225 was extinguished. The antenna structure is located within 8 miles of the Great Falls airport and 11 miles of the Malmstrom Air Force Base. According to the ASR, the structure is 244 meters above ground level and is required by the FAA to maintain lighting in accordance with chapters 4, 6, and 9 of FAA Circular Number 70/7460-1G. On May 3, 2002, both the ASR and the FCC database listed Continental Television Network, Inc., d/b/a KTGF as the registered owner of the antenna structure. Efforts by the Seattle Agent to contact Continental Television Network, Inc., and station KTGF-TV that evening and over the weekend failed.

¹ 47 U.S.C. § 303(q) (Antenna structure owners shall maintain the painting and lighting of antenna structures as prescribed by the Commission).

² 47 C.F.R. §§ 17.21, 17.47(a)(2), and 17.57.

³ 47 U.S.C. § 503(b).

3. On May 4, 2002, the top strobe light was still extinguished. The Seattle Agent again attempted to contact the Continental Television Network, Inc. and Station KTGF-TV, to no avail. The Agent visited the KTGF-TV studio at 118 6th Street South in Great Falls, Montana, but the office was closed.

4. On May 5, 2002 the light was still extinguished. Contact with the FAA Flight Service Station in Great Falls, MT indicated that the extinguished light had not been reported. The Seattle FCC Agent reported the outage to the FAA and a Notice to Airman (NOTAM) was issued.

5. On Monday, May 6, 2001, the Seattle Agent, returning to Great Falls from Helena, MT, observed the top strobe light functioning. At approximately 1:00 p.m., the Seattle Agent visited the KTGF-TV studio. The station manager stated that Max Media was the owner of both the station and the antenna structure, that the automatic monitoring of the tower lighting was conducted at a remote Max Media facility in Missoula, Montana, and that KTGF-TV had not been notified of the tower light failure. The station engineer was, however, at the tower site at that time, doing maintenance on the system.

6. Station personnel at KTGF provided a copy of a 1998 ASR Application identifying Continental Television Network, Inc., as the registered owner, but were unable to produce a copy of an ASR identifying Max Media as the registered owner. Subsequent review of the FCC database revealed that ownership of Station KTGF-TV was transferred on March 28, 2001 from Continental Television Network, Inc., to Max Media of Montana, LLC. The ownership information for ASR 1051225 was not updated from the 1998 filing listing the structure owner as Continental Television Network, Inc., until September 9, 2002.

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴

8. Section 303(q) of the Act requires antenna structure owners to maintain lighting of antenna structures as required by the Commission. The Commission's antenna structure construction, marking and lighting requirements operate in concert with FAA regulations to ensure that antenna structures do not present hazards to air navigation. Generally, Sections 17.6(a), 17.21 and 17.23 of the Rules require owners of antenna structures located close to airports or that are greater than 200 feet in height to comply with prescribed painting and lighting specifications designed to ensure air safety. Because of the substantial public safety issues involved, Section 17.47 of the Rules further requires antenna structure owners to monitor lights daily or install automatic alarm systems to ensure lights function properly, and Section 17.47(a)(2) specifically requires antenna structure owners to properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner. Antenna structure owners are also required, pursuant to Section 17.56 of the Rules, to maintain lighting equipment and replace or repair inoperative lights, indicators and control and alarm systems as soon as practicable. Additionally, Section 17.48(a) requires antenna structure owners to immediately notify the FAA of any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes. The FAA then issues a Notice to Airmen ("NOTAM") for a period of 15 days advising aircraft that there is an antenna structure at a specific location with a temporary light outage. Section 17.57 further requires antenna structure owners to immediately notify the Commission using FCC Form 854 upon any change in ownership information to facilitate contact if problems

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

arise.

9. Max Media failed to detect an extinguished top high-intensity light on its 244 meter structure located in proximity to two airports, failed to notify the local station manager that there was an extinguished top light on the structure during the 3 days that the light was observed extinguished, and failed to notify the FAA of the extinguishment. Max Media's failure to update the ASR ownership report complicated efforts to notify it of the serious potential hazard to air navigation posed by the extinguished light.

10. Based on the evidence before us, we find that Max Media apparently willfully violated Sections 17.21, 17.47(a)(2), and 17.57 of the Rules by failing to exhibit the prescribed antenna structure lighting, failing to properly maintain an operating automatic alarm system to indicate when the structure lighting is not operating, and failing to notify the FCC of the change in ownership of the antenna structure.

11. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"),⁵ and Section 1.80 of the Commissions Rules,⁶ for failure to comply with prescribed lighting is \$10,000 and for failure to file required forms or information is \$3,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁷ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Forfeiture Policy Statement and statutory factors to the instant case, a \$13,000 forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Rules, Max Media of Montana, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for apparently willfully violating Sections 17.21, 17.47(a)(2), and 17.57 of the Rules.⁸

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Max Media of Montana, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must note NAL/Acct. No. 200232900002 and FRN 0004-9891-33

15. The response, if any, must be mailed to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and must note NAL/Acct. No. 200232900002.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.21, 17.47(a)(2), and 17.57.

reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail No. 7001 2510 0007 6500 1049 / Return Receipt Requested to Max media of Montana, LLC, 900 Laskin Road, Virginia Beach, VA 23451.

FEDERAL COMMUNICATIONS COMMISSION

Dennis Anderson
District Director, Seattle Office

⁹ See 47 C.F.R. § 1.1914.